IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8961 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

AMARSINHBHAI MAGANBHAI VASAVA

Appearance:

1. Special Civil Application No. 8961 of 2002

MS ROOPAL R PATEL for Petitioner No. 1

MR JIGAR P RAVAL for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 24/12/2002

ORAL JUDGEMENT

1. Heard. Rule. Mr. J.P. Rawal, learned advocate for respondent waives service and accepts notice of rule. On joint request of learned advocate for the parties, this petition is taken up today for final hearing.

2. The petitioner GSRTC in this petition has

challenged the award dated 26-9-2001 passed by the Labour Court, Vadodara in Reference (LCV) No: 1101 of 1995 whereby Labour Court has set aside penalty of dismissal from service imposed by the disciplinary authority and directed reinstatement in service of the respondent workman with 25 % backwages. The misconduct proved in the departmental proceedings is that of misappropriation of the funds, by not issuing tickets to the passengers in the local S.T. bus which was plying on the route of Karjan-Padra, wherein respondent workman was on duty as the conductor.

3. By earlier order this Court while issuing notice did not grant interim relief as regards reinstatement of respondent workman in service and respondent workman has been reinstated in service. It is not disputed that during pendency of the petition respondent workman retired from service w.e.f. 30-4-2002.

4. Relying on the decision in case of Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, (2001) 2 SCC pg. 574, it has been submitted by Ms. Roopal Patel, learned advocate for the petitioner Corporation that, since the respondent workman has retired from service, he may be allowed retirement benefits as he has been superannuated and since the misconduct is proved, backwages at 25 % awarded in the impugned award be set aside. In case of Karnataka State Road Transport Corporation (supra), the Supreme Court held that the bus conductor charging higher fare from passengers, knowing well the correct fare to be charged, is a gross misconduct and the order of dismissal would be justified and the reinstatement in service of such a workman with full backwages is unjustified and that it would be a case of misplaced sympathy. It has been further held that the respondent has already been superannuated in the meantime and therefore the order of reinstatement need not be set aside and the respondent would not be entitled to any backwages though shall be entitled for retirement benefits.

5. I have perused the impugned award. As far as the misconduct is concerned same is of a grave nature in as much as the respondent workman is proved to have misappropriated public funds by not issuing tickets to passengers covering the distance, and when the misconduct is proved, there would be ordinarily no reinstatement of such person in service. But in the instant case workman has been superannuated during pendency of this case, otherwise the question of reinstatement would not arise. But looking to the nature of misconduct the petitioner

would not be entitled to backwages at the rate of 25 % awarded in the impugned award.

6. Under the circumstances, the impugned award in so far as it grants reinstatement of the petitioner in service since the respondent workman has superannuated in the meantime need not be set side. However, the respondent is held not to be entitled to backwages at the rate of 25 % granted under the impugned award. It is clarified that respondent workman would be entitled to the retirement benefits from the date of his superannuation. Petition disposed of accordingly. Rule made absolute to the aforesaid extent. No cost.

Dt: 24-12-2002 (N.G. Nandi, J)